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Via email and overnight delivery

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: **D.T.E. 98-57, Phase III - Verizon PARTS Offering**

Dear Secretary Cottrell:

WorldCom, Inc. ("MCI") submits the following letter in lieu of formal reply comments in response to the September 2, 2003 Procedural Memorandum in which the Department solicited the comments of the parties on the question of "whether the Department's review of Verizon's PARTS offering is preempted by, or is otherwise inconsistent with, *the Triennial Review Order* and promulgated regulations." MCI's reply comments address specifically the initial comments of Verizon Massachusetts ("Verizon"), which has argued, incorrectly, that the Department's investigation of its PARTS offering must be terminated by the Department because, it argues, the Department has no authority to require Verizon to provide or unbundle its PARTS offering. Verizon Comments, p. 4. As MCI will show below, Verizon's claims of preemption are overstated and the Department retains sufficient authority under federal and state law to pursue

this investigation. MCI urges the Department to proceed expeditiously to examine the important issues in this docket.

1. The Department Should Not Assume That the FCC's Views on Preemption Will be Sustained on Appeal

It must be observed that the Triennial Review Order ("TRO") did not specifically preempt any state unbundling rules that impose unbundling obligations on ILECs with respect to broadband services that are greater than those imposed by Rule 319 of the FCC's rules. The FCC stated in the TRO its opinion with respect to any such state rules: "we believe it unlikely that such decision would fail to conflict with and 'substantially prevent' implementation of the federal regime, in violation of section 251(d)(3)(C]." TRO, par. 195. These statements are insufficient reasons to abandon this investigation, as proposed by Verizon.

Section 251 (d)(3) of the Telecommunications Act of 1996 (the "Act") clearly established the rights of the states to continue their role in regulating the transition from a monopoly market in telecommunications to competition. Pursuant to this section, states have added to the ILECs' unbundling obligations as a matter of state law and public policy. The FCC has now, in the TRO, attempted to read that dual role right out of the statute. TRO, par. 192. Verizon argues in its comments that with regard to unbundled access to packet switching, "the FCC occupies the field, leaving no room for state commissions to independently decide the issue." Verizon Comments, p. 4. Yet, if Congress had intended that the FCC's unbundling rules would occupy the field of regulation, it would not have included section 251(d)(3) in the Act. The FCC's interpretation of section 251(d)(3) in the TRO, with respect to the role of the states

in creating state law unbundling obligations, may not survive judicial review. The Department should not assume that the FCC's interpretation of the statute will be sustained on appeal. The Department should not suspend or terminate its investigation of these issues that are so vital to the continued evolution of telecommunications competition while the FCC's attempt at preemption is litigated in the courts.

2. The Department Should Not Assume That the FCC Would Preempt Department Actions in this Proceeding

The FCC's opinions about the effects of its new unbundling rules on state authority leave some room for state action. The FCC stated that it finds it "unlikely" that preemption would not apply. The Department clearly has the right to test the limits of the FCC's attempt to preempt the states. If Verizon believes that a Department decision on PARTS is preempted by inconsistent federal rules, it should apply to the FCC for a declaratory ruling to that effect. The Department should not be deterred by the threat of a Verizon preemption claim from examining conditions in the DSL market in Massachusetts.

3. The Department Has Sufficient Authority Under Federal and State Law

In addition, there can be no doubt of the Department's authority to investigate competitive conditions in the Commonwealth, even if the FCC has lawfully constrained the scope of any remedial measures that the Department might adopt at the conclusion of its investigation. The Department clearly has the right under Massachusetts law to investigate all

aspects of Verizon's services in Massachusetts as part of its regulatory powers over Verizon's regulated intrastate rates. If the Department were sufficiently concerned about Verizon's unfair competitive advantages in the broadband market, the Department could invite Verizon to make voluntary commitments to provide and unbundle PARTS as well as provide line sharing as a condition of continuation of its current form of alternative regulation. Nothing in the Act or the FCC's rules precludes Verizon from making voluntary unbundling commitments if other regulatory needs make it desirable to do so.

In addition, Verizon's obligations under section 271 of the Act to provide specific unbundled elements, including loops, confer sufficient authority on the Department to require Verizon to provide and unbundle PARTS and to provide line sharing, at just, reasonable and nondiscriminatory rates.

4. Even if the Department is Constrained by Federal Preemption, the Department has Numerous Pricing and Operational Issues To Address

Finally, even assuming federal preemption of the state's ability to require Verizon to provide and unbundle PARTS and to provide line sharing, there are nonetheless numerous related issues that require attention and resolution. Even if the FCC's rules are sustained and CLECs are no longer entitled to access to fiber-fed loops for the provision of broadband services, Verizon is nonetheless still obligated to provide wholesale access to these loops under section 271 of the Act, at just, reasonable and non-discriminatory rates, terms and conditions. TRO, par. 653. The Department will need to investigate how, in the absence of PARTS, will CLECs gain access to these hybrid loops at wholesale rates. Further, the Department must

examine the rates (TELRIC), terms and conditions for CLEC access at Verizon's remote terminals to copper subloops, as well as the voice traffic carried over a fiber-fed loop. In addition, the Department must look at rates, terms and conditions for CLEC access to Verizon dark fiber between the Verizon central office and remote terminal.

In conclusion, Verizon has vastly overstated the legal significance of the TRO. For the reasons stated above, the Department should reject Verizon's interpretation of the Act and the TRO and should resume its investigation in this docket.

Respectfully submitted,

Richard C. Fipphen

Cc: Jesse S. Reyes, Hearing Officer
Service List